

HOUSE BILL No. 1218

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-26-5; IC 32-24-4.6.

Synopsis: Eminent domain issues. Provides that if more than half of the members of the board of trustees of a regional water, sewer, or solid waste district are appointed rather than elected, the district may not initiate any proceeding to: (1) condemn; (2) appropriate; or (3) exercise the power of eminent domain; to acquire real property within or outside the district after March 27, 2008. Sets forth procedures to be followed by a condemnor that initiates a proceeding after March 27, 2008, to condemn a parcel of real property for use in establishing or expanding a landfill. Allows the owner of the parcel in such a proceeding to file a request for mediation at the same time that the owner files an objection or an exception in the proceeding. Provides that the condemnor must pay the owner: (1) 200% of the fair market value of the parcel; (2) other damages and compensation for any loss incurred by the owner in a trade or business because of the condemnation; (3) any relocation costs of the owner; and (4) costs of the proceeding and litigation expenses, as permitted by law. Makes a technical correction to correct a reference to a nonexistent code cite.

Effective: Upon passage.

Walorski

January 14, 2008, read first time and referred to Committee on Local Government.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1218

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-26-5-2, AS AMENDED BY P.L.221-2007,
2 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 2. A district may do the following:

- 4 (1) Sue or be sued.
5 (2) Make contracts in the exercise of the rights, powers, and
6 duties conferred upon the district.
7 (3) Adopt and alter a seal and use the seal by causing the seal to
8 be impressed, affixed, reproduced, or otherwise used. However,
9 the failure to affix a seal does not affect the validity of an
10 instrument.
11 (4) Adopt, amend, and repeal the following:
12 (A) Bylaws for the administration of the district's affairs.
13 (B) Rules and regulations for the following:
14 (i) The control of the administration and operation of the
15 district's service and facilities.
16 (ii) The exercise of all of the district's rights of ownership.
17 (5) Construct, acquire, lease, operate, or manage works and obtain



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rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.

(6) Assume in whole or in part any liability or obligation of:

(A) a person;

(B) a nonprofit water, sewage, or solid waste project system; or

(C) an eligible entity;

including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.

(7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:

(A) The payment of the expenses of the district.

(B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.

(C) The payment of principal or interest on the district's obligations.

(D) To fulfill the terms of agreements made with:

(i) the purchasers or holders of any obligations; or

(ii) a person or an eligible entity.

(8) Except as provided in section 2.5 of this chapter, require connection to the district's sewer system of property producing sewage or similar waste, and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:

(A) there is an available sanitary sewer within three hundred (300) feet of the property line;

(B) the district has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice; and

(C) if the property is located outside the district's territory:

(i) the district has obtained and provided to the property owner (along with the notice required by clause (B)) a letter

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of recommendation from the local health department that there is a possible threat to the public's health; and

(ii) if the property is also located within the extraterritorial jurisdiction of a municipal sewage works under ~~IC 13-9-23~~ **IC 36-9-23** or a public sanitation department under IC 36-9-25, the municipal works board or department of public sanitation has acknowledged in writing that the property is within the municipal sewage works or department of public sanitation's extraterritorial jurisdiction, but the municipal works board or department of public sanitation is unable to provide sewer service.

However, a district may not require the owner of a property described in this subdivision to connect to the district's sewer system if the property is already connected to a sewer system that has received an NPDES permit and has been determined to be functioning satisfactorily.

(9) Provide by ordinance for reasonable penalties for failure to connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.

(10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.

(11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.

(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

(13) **Except as provided in section 6(c) of this chapter**, hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

(A) the location or protection of works;

(B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or

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- 1 (C) obtaining or storing material to be used in constructing and
 2 maintaining the works.
- 3 (14) Upon consent of two-thirds (2/3) of the members of the
 4 board, merge or combine with another district into a single district
 5 on terms so that the surviving district:
- 6 (A) is possessed of all rights, franchises, and authority of the
 7 constituent districts; and
- 8 (B) is subject to all the liabilities, obligations, and duties of
 9 each of the constituent districts, with all rights of creditors of
 10 the constituent districts being preserved unimpaired.
- 11 (15) Provide by agreement with another eligible entity for the
 12 joint construction of works the district is authorized to construct
 13 if the construction is for the district's own benefit and that of the
 14 other entity. For this purpose the cooperating entities may jointly
 15 appropriate land either within or outside their respective borders
 16 if all subsequent proceedings, actions, powers, liabilities, rights,
 17 and duties are those set forth by statute.
- 18 (16) Enter into contracts with a person, an eligible entity, the
 19 state, or the United States to provide services to the contracting
 20 party for any of the following:
- 21 (A) The distribution or purification of water.
- 22 (B) The collection or treatment of sanitary sewage.
- 23 (C) The collection, disposal, or recovery of solid waste.
- 24 (17) Make provision for, contract for, or sell the district's
 25 byproducts or waste.
- 26 (18) **Except as provided in section 6(c) of this chapter**, exercise
 27 the power of eminent domain.
- 28 (19) **Except as provided in section 6(c) of this chapter**, remove
 29 or change the location of a fence, building, railroad, canal, or
 30 other structure or improvement located within or outside the
 31 district. If:
- 32 (A) it is not feasible or economical to move the building,
 33 structure, or improvement situated in or upon land acquired;
 34 and
- 35 (B) the cost is determined by the board to be less than that of
 36 purchase or condemnation;
- 37 the district may acquire land and construct, acquire, or install
 38 buildings, structures, or improvements similar in purpose to be
 39 exchanged for the buildings, structures, or improvements under
 40 contracts entered into between the owner and the district.
- 41 (20) Employ consulting engineers, superintendents, managers,
 42 and other engineering, construction, and accounting experts,

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attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.

(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 2. IC 13-26-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Subject to subsection (b) **and except as provided in subsection (c)**, the board may condemn for the use of the district public or private land, easements, rights, rights-of-way, franchises, or other property within or outside the district required by the district for the accomplishment of the district's purposes according to the statutory procedure for the appropriation of land or other property taken by an eligible entity.

(b) The power of condemnation by a district under this article may not be exercised against a sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 until the expiration of twelve (12) years after the granting of the certificate of territorial authority.

(c) This subsection applies to a district if more than one half (1/2) of the members of the board of trustees of the district are appointed rather than elected to the board under IC 13-26-4. A district to which this subsection applies may not initiate any action or proceeding to:

(1) condemn;

(2) appropriate; or

(3) exercise the power of eminent domain to acquire;

real property within or outside the district after March 27, 2008. This subsection does not affect the right of any eligible entity to take any action described in subdivisions (1) through (3) to the

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1 extent authorized by law.

2 SECTION 3. IC 32-24-4.6 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]:

5 **Chapter 4.6. Eminent Domain for Landfill Purposes**

6 **Sec. 1. (a) This chapter applies to a condemnor that initiates an**
7 **action or a proceeding after March 27, 2008, to:**

8 (1) condemn;

9 (2) appropriate; or

10 (3) exercise the power of eminent domain to acquire;
11 a parcel of real property for use in establishing or expanding a
12 landfill on part or all of the parcel sought to be acquired.

13 (b) Except as otherwise provided by this chapter, the procedures
14 set forth in IC 32-24-1 apply to an action or a proceeding under
15 this chapter.

16 **Sec. 2. As used in this chapter, "condemnor" means a person**
17 **authorized to exercise the power of eminent domain.**

18 **Sec. 3. As used in this chapter, "landfill" means a solid waste**
19 **disposal facility at which solid waste is deposited on or in the**
20 **ground as an intended place of final location.**

21 **Sec. 4. As used in this chapter, "owner" has the meaning set**
22 **forth in IC 32-24-1-2.**

23 **Sec. 5. As used in this chapter, "parcel of real property" means**
24 **real property that:**

25 (1) is under common ownership; and

26 (2) a condemnor seeks to acquire.

27 **Sec. 6. As used in this chapter, "relocation costs" means**
28 **relocation expenses payable in accordance with the federal**
29 **Uniform Relocation Assistance Act (42 U.S.C. 4601 through 42**
30 **U.S.C. 4655).**

31 **Sec. 7. (a) In a proceeding by a condemnor to acquire a parcel**
32 **of property under this chapter, the owner of the parcel sought to**
33 **be acquired may file a request for mediation at the same time that**
34 **the owner files an objection or an exception in the proceeding**
35 **under IC 32-24-1. A request under this section shall be filed with**
36 **the court having jurisdiction of the proceeding.**

37 (b) If the owner files a request for mediation under subsection
38 (a), the mediation shall occur as follows:

39 (1) The court shall appoint a mediator not later than ten (10)
40 days after the request for mediation is filed.

41 (2) The condemnor shall engage in good faith mediation with
42 the owner, including the consideration of a reasonable

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alternative to the exercise of eminent domain.

(3) The mediation must be concluded not later than ninety (90) days after the appointment of the mediator.

(4) The condemnor shall pay the costs of the mediator.

Sec. 8. Notwithstanding IC 32-24-1, a condemnor that acquires a parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

(1) For agricultural land, all of the following:

(A) Either:

(i) payment to the owner equal to two hundred percent (200%) of the fair market value of the parcel as determined under IC 32-24-1; or

(ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain.

(B) Payment of any other damages determined under IC 32-24-1 and compensation for any loss incurred in a trade or business that is attributable to the exercise of eminent domain.

(C) Payment of the owner's relocation costs, if any.

(D) Payment of costs and litigation expenses, as provided under IC 32-24-1-14.

(2) For a parcel of real property not described in subdivision (1), all of the following:

(A) Payment to the owner equal to two hundred percent (200%) of the fair market value of the parcel as determined under IC 32-24-1.

(B) Payment of any other damages determined under IC 32-24-1 and compensation for any loss incurred in a trade or business that is attributable to the exercise of eminent domain.

(C) Payment of the owner's relocation costs, if any.

(D) Payment of costs and litigation expenses, as provided under IC 32-24-1-14.

SECTION 4. An emergency is declared for this act.

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